Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Developing a Unified Intercarrier Compensation Regime	)	CC Docket No. 01-92
	)	

Reply Comments of the Supporters of the Missoula Plan On Their Phantom Traffic Proposal

January 5, 2007

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I. INTRODUCTION AND SUMMARY

As the Missoula Plan Supporters and other commenters have explained, in its simplest terms, "phantom traffic" occurs when a terminating carrier does not know whom or what to bill for intercarrier compensation due to a lack of identifying information for a particular call.[1] There is no dispute that phantom traffic is a pervasive problem throughout the telecommunications industry.[2] The only disagreement contained in the record before the Commission concerns the precise scope of the phantom traffic problem and how best to remedy it. Such differences are relatively small and, in some sense, inevitable even with the best proposals. Therefore the Commission should not be dissuaded from acting immediately. In sum, the phantom traffic problem is real; the magnitude of the problem is large under any scenario; and the Missoula Plan solution offers readily achievable and meaningful net public interest benefits. Accordingly, as explained in depth below, the Missoula Plan Supporters respectfully request the Commission to find that the proposal set forth in their November 6, 2006 filing ("Proposal") provides an effective and efficient solution to tackle the problem of phantom traffic, and to adopt it immediately.

The Missoula Plan Supporters' Proposal offers a critical step towards reforming intercarrier compensation. There is universal agreement among the diverse group of commenters that comprehensive intercarrier compensation reform is long overdue and

[1] *See, e.g.*, Missoula Plan at 56 (filed with the Commission in CC Docket Nos. 01-92, *et al.*, on July 24, 2006 by NARUC); Alaska Telephone Association Comments at 2; FairPoint Communications Comments at 2; Nebraska Rural Independent Companies Comments at 1.

[2] *See, e.g.*, Rural Independent Competitive Alliance Comments at 1-2 ("RICA Comments"); John Staurulakis, Inc. Comments at 2-3 ("JSI Comments"); Frontier Communications Comments at 1; Western Telecommunications Alliance Comments at 1.

equalizing compensation rates for the majority of the nation's access lines, in turn, will address one of the root causes of phantom traffic.[3] As long as there are different intercarrier compensation rates that vary by one or more criteria (*e.g.*, jurisdiction), however, there will continue to be a need for comprehensive rules requiring carriers to identify that traffic according to that criteria. More importantly, even if there were a single, national rate for intercarrier compensation, so long as carriers terminate traffic from a multitude of providers, terminating carriers will continue to need to know whom to bill. Several states, such as Georgia, Minnesota, and Missouri, have taken laudable steps to address the phantom traffic problem.[4] This state-by-state activity, however, has resulted in different solutions where consistency is sorely needed and, in any event, state action can only address intrastate traffic. Commission action is necessary to reach a comprehensive and uniform national solution. The Missoula Plan Supporters bring forth a measured solution to an industry-wide problem that should be welcomed by all carriers because of the consistency and certainty it brings to the process. If these important issues are left to a state-by-state complaint process, the industry will continue to face substantial and increasing litigation expenses.

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[3] *See, e.g.*, FairPoint Communications Comments at 2; National Cable & Telecommunications Association Comments at 7 ("NCTA Comments"); National Exchange Carrier Association, Inc., National Telecommunications Cooperative Association, Organization for the Promotion and Advancement of Small Telecommunications Companies, and Eastern Rural Telecom Association Comments at 8 ("NECA, *et al.* Comments"); T-Mobile USA, Inc. Comments at 2 ("T-Mobile Comments"); United States Telecom Association Comments at 3-4 ("USTelecom Comments"); United Utilities, Inc. Comments at 3; Western Telecommunications Alliance Comments at 2.

[4] For example, ILECs in Missouri have experienced a measure of success in identifying and billing terminating traffic carried by transit providers as a result of processes established by the Missouri Public Service Commission. Similarly, the Georgia Public Service Commission adopted, with modifications, an industry agreement that provides for the provision of call detail records. "Order on Transit Traffic Involving Competitive Local Exchange Carriers and Independent Telephone Companies," Ga. PSC Docket No. 16772-U, March 24, 2005.

In today's regulatory environment, terminating carriers may not receive adequate calling party telephone number information in call signaling because of legitimate technical reasons, because of intentional mislabeling or removal of calling party data, or simply because a carrier fails to supply such information given the lack of current rules requiring it to do so.[5] Even Verizon, an opponent of the Proposal, acknowledges that *one-fifth* of the traffic that transits over or terminates on its network is phantom traffic.[6] The overwhelming majority of incumbent local exchange carriers ("ILECs"), the class of carrier that bears the brunt of the costs of phantom traffic,[7] supports this Proposal and disagrees with Verizon that the existing tools available to carriers are adequate to address this problem. The Missoula Plan Supporters alone consist of more than 350 ILECs. Trade associations representing the majority of ILECs filed comments in support of the Proposal.[8] Moreover, it is not just ILECs that overwhelmingly agree that phantom traffic rules are necessary. A national association representing rural competitive LECs ("CLECs") also agrees that phantom traffic is a "serious concern and one which has not

[5] *See, e.g.*, NECA, *et al.* Comments at 6 (stating that it is "increasingly apparent that a portion of this 'phantom' traffic results from intentional actions by service providers to disguise the nature of their traffic so as to receive termination service for free or at a rate lower than what legally should be charged"); USTelecom Comments at 2.

[6] Verizon Comments at 4 (stating that 20 percent of the traffic that transits over or terminates on its network is missing calling party information or contains invalid calling party data).

[7] It is important to note that it is really these carriers' subscribers – consumers – who truly bear the brunt of phantom traffic in the form of higher rates. *See* Illinois Independent Telephone Association Comments at 2.

[8] *See generally* Independent Telephone and Telecommunications Alliance and Balhoff and Rowe, LLC. Comments ("ITTA Comments"); Minnesota Independent Coalition Comments (75 members); NECA, *et al.* Comments (NTCA has 570 members; OPASTCO has 550 members; and Eastern Rural Telecom Association has 68 members); USTelecom Comments; Western Telecommunications Alliance Comments (250 members). Even accounting for some membership overlap among these associations, it is accurate to state that a significant number of carriers support this Proposal.

been solved by voluntary industry cooperation."[9] The Commission should not hesitate from acting to adopt this widely supported Proposal because of a few outlying objectors.

The goals of the Proposal are simple: Enable carriers to know *what* to bill and *whom* to bill. These principles too find strong support among the commenters. The Proposal accomplishes these goals through its proposed call signaling and call detail record rules, which will enable any carrier entitled to bill an intercarrier compensation charge to receive call detail records or, in the interim, call summary information. While there will continue to be debates about the proper intercarrier compensation that should apply when carriers exchange traffic, such debates are not the subject of this Proposal, and the Commission need not resolve such issues in order to establish requirements for the proper identification of traffic as some commenters suggest.[10] Indeed, as discussed above, traffic identification rules will still be necessary regardless of the manner in which the Commission resolves the disputes concerning the appropriate rates for intercarrier compensation. The Commission should reject efforts to use other issues to cloud a straight-forward solution to the phantom traffic problem.

Summary of the Proposal: The Proposal contains both an interim plan and a permanent, or uniform, plan to address phantom traffic. The Proposal is clear, however, that the proposed rules are default rules so that originating, transit and terminating carriers may agree to use alternative arrangements to those prescribed therein.[11] During

[9] RICA Comments at 2.

[10] *See* note 45 *infra*.

[11] Proposal at n.1. Thus, as suggested by some commenters, the Proposal expressly permits carriers that have developed alternate solutions and/or entered into contractual arrangements to address phantom traffic to maintain the status quo, if they so choose. *See, e.g.*, Minnesota Independent Coalition Comments at 2; Western Telecommunications Alliance Comments at 4.

the interim stage, the Proposal would impose call signaling obligations on both originating and intermediate providers.[12] Specifically, every originating provider must transmit in its signaling the telephone number assigned to the calling party[13] and every intermediate provider must transmit the telephone number information described in footnote 13 that it receives from another provider.[14] The Proposal rightfully recognizes that there can be legitimate technological and regulatory impediments to carriers fulfilling their signaling obligations and sets forth a process by which a carrier may seek additional exceptions to these proposed signaling rules.[15] Moreover, the Proposal also requests that the Commission vigorously enforce these proposed call signaling rules and suggests modest steps to facilitate this request (*e.g.*, adding call signaling disputes to the list of proceedings that merit inclusion in the Commission's Accelerated Docket; subjecting chronic violators to special interconnection obligations).[16]

The Commission should disregard comments that fail to acknowledge this important fact. *See, e.g.*, Texaltel Comments at 2 (urging the Commission to apply "business arrangements that are evolving among cooperating parties" to the industry); Cavalier Telephone, LLC, McLeodUSA Telecommunications Services, Inc., Pac-West Telecom, Inc., RCN Corporation Comments at 24 ("Cavalier, *et al.* Comments") (arguing that the Commission should not upset negotiated solutions to address phantom traffic).

[12] *See* Proposal at 2 (cross-referencing the Missoula Plan at section V.A., found at 56). Subsequent page and section references concerning the call signaling provisions will be to the Missoula Plan. These call signaling rules would continue under the uniform process.

[13] Section V.A.2.a. (explaining that carriers using SS7 signaling protocol must transmit this information in either the calling party number ("CPN") or charge number ("CN") parameters and carriers using multi-frequency ("MF") signaling protocol must transmit this information in the automatic number identification ("ANI") parameter).

[14] Section V.A.2.b.

[15] Section V.B.

[16] Section V.C.

The interim plan also requires transit providers that currently provide either call summary information or call detail records to continue doing so and directs transit providers, and in certain cases ILECs that deliver traffic to a transit provider, that are not currently creating either type of record to begin providing call summary information within nine months of the Commission's order.[17] To incent transit providers to create and distribute call detail records during this interim period, the Proposal allows transit providers to charge terminating carriers for these records.[18] The Proposal also permits ILECs to elect to create call detail records and/or call summary information.[19] To facilitate the exchange of call detail records and call summary information and the establishment of billing relationships between originating and terminating carriers, the Proposal requires carriers operating within a LATA to share certain identification and contact information with one another.[20] In addition, as part of the interim plan, the Proposal requests the Commission to extend its holding in the *T-Mobile Order* to interconnection arrangements between ILECs and other wireline carriers.[21] Finally, during this interim phase, the Proposal requests the Commission to clarify that where a CLEC or CMRS carrier collaborates with an ILEC in the joint provision of switched

[17] Proposal at III.B.

[18] Proposal at III.F.2.c. To the extent a transit provider is already charging carriers for either call detail records or call summary information, the transit provider will maintain the status quo during the interim period.

[19] Proposal at III.B.

[20] Proposal at Appendix A.

[21] *See* Proposal at 2 (citing *Developing a Unified Intercarrier Compensation Regime, T-Mobile et al. Petition for Declaratory Ruling Regarding Incumbent LEC Wireless Termination Tariffs*, CC Docket No. 01-92, Declaratory Ruling and Report and Order, 20 FCC Rcd 4855 (2005) ("*T-Mobile Order*").

access service for the termination or origination of an interexchange carrier's ("IXC") traffic, the CLEC or CMRS carrier is subject to the requirements contained in the Multiple Exchange Carrier Access Billing ("MECAB" Standards Document).[22]

The uniform process becomes effective at Step 2 of the Missoula Plan and builds upon the important progress that carriers will have made pursuant to their obligations under the interim plan. The uniform process recognizes that carriers must exchange call detail records. While an important start, call summary information is simply insufficient to curtail phantom traffic. To that end, the uniform process continues the call signaling requirements that became effective during the interim process but *requires* transit providers to create and distribute call detail records.[23] The format and content of call detail records and means by which to exchange these records are all described in the uniform process.[24] The charge for creating and distributing call detail records is covered by the charges for tandem transit service prescribed in the Missoula Plan.[25] The notification procedures set forth in Appendix A continue to apply during the uniform process,[26] and the process for identifying VoIP-originated traffic becomes effective at Step 1 of the Missoula Plan. This proposed process is found in Appendix B of the Proposal and is designed to improve billing accuracy by terminating carriers.[27]

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[22] Proposal at IV. *See also* Proposal at n.3 (providing the citation to the MECAB Standards Document).

[23] Proposal at II.B. As before, ILECs may elect to create call detail records.

[24] Proposal at II.D., E.

[25] Proposal at II.F.

[26] Proposal at II.G.

[27] Proposal at Appendix B.

II. DISCUSSION

A. Consensus that the Phantom Traffic Problem Must Be Immediately Addressed

Record Evidence Shows Significant Problem Caused by Phantom Traffic. The Commission need not ascertain with numerical precision the scope of the phantom traffic problem in order to address it. Clearly, carriers today terminate a significant amount of misidentified or unidentified traffic. Whether the amount of such traffic is 15, 25 or 40 percent is immaterial. No one disputes that the problem is significant, and, as such, warrants Commission action. Moreover, there is ample evidence in the record demonstrating the scope of the phantom traffic problem.[28] Verizon, which would have the Commission take virtually no action until the phantom traffic issue can be calculated with pinpoint numerical accuracy, admits that approximately 20 percent of the traffic that it transits or terminates lacks correct or accurate calling party data, an experience that is shared by others in the industry.[29] Whatever the precise amount, the problem is significant enough to warrant Commission action. Failure to act only perpetuates the current unfair shifting of network cost recovery both to parties that provide proper billing information and to parties that terminate traffic with incorrect or missing information.[30]

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[28] *See, e.g.,* NECA, *et al.* Comments at n.12 (citing numerous *ex parte* filings that document phantom traffic issues) & 6 (noting phantom traffic adversely affects 10 to 15 percent of rural ILECs' revenues); JSI Comments at 2.

[29] *See, e.g.,* Verizon Comments at 4; USTelecom Comments at n.2 (citing industry analyst estimates that place this figure as high as 20 percent).

[30] *See* NECA, *et al.* Comments at 7; JSI Comments at 2; Western Telecommunications Alliance Comments at 1-2.

Widespread Recognition that Interim Plan is Necessary. As noted above, the Proposal consists of an interim and permanent proposal, the former to be implemented immediately and the latter to go into effect at Step 2 of the Missoula Plan. Several commenters question the need for an interim measure, either suggesting that the Commission immediately adopt equalized termination rates or maintain the status quo until adoption of unified rates because the phantom traffic problem is overstated.[31] Both arguments are incorrect and must be rejected. As the Western Telecommunications Alliance explains, the interim plan will give terminating carriers and the Commission a more accurate and complete picture of the nature, amount, and origin of the terminating traffic subject to intercarrier compensation.[32] The interim plan also strikes a reasonable balance by providing meaningful proposals that the Commission can adopt immediately and carriers can implement quickly. Moreover, the interim plan was designed to ensure that transit providers that currently provide call detail records or call summary information continue to do so prior to implementation of both the uniform process and the Missoula Plan.

Suggesting that the Commission move immediately to the permanent solution fails to account for the amount of time that the Commission will require to adopt the

[31] *See, e.g.*, NCTA Comments at 7; General Communications, Inc. Comments at 3-4 ("GCI Comments"); VON Coalition Comments at 1.

[32] Western Telecommunications Alliance Comments at 3. *See also* Iowa Utilities Board Comments at 1; Alaska Telephone Association Comments at 3; FairPoint Communications Comments at 4; Illinois Independent Telephone Association Comments at 2-3; Nebraska Rural Independent Telephone Companies Comments at 2-3; NECA, *et al.* Comments at 1; United Utilities, Inc. at 2; USTelecom Comments at 4; Western Telecommunications Alliance Comments at 3; Wisconsin State Telecommunications Association Small Company Committee Comments at 4 (all urging immediate adoption of the interim proposal).

Missoula Plan and for its implementing rules to become effective.[33] The Missoula Plan was carefully designed to be implemented in stages in recognition that a flash-cut to unified rates for the majority of access lines would be disruptive to both consumers and carriers. Maintaining the status quo until the Missoula Plan is adopted and implemented similarly cannot be supported given the prevalence of and significant costs attributable to the phantom traffic problem described above. The adoption of the interim proposal will constitute a major step in addressing the problem - no rational basis exists to permit the phantom traffic problem to linger and grow. The interim proposal, however, is not the end game. The interim proposal is a transition to the uniform proposal, and it is the uniform proposal that will establish a consistent and systematic mechanism for both identification of traffic and the elimination of phantom traffic. Accordingly, the Commission can not simply adopt the interim proposal. After it does so, the Commission should proceed to consider, as a component of the overall Missoula Plan, the uniform proposal.[34]

B. Support for Key Aspects of Proposal among Variety of Carriers

With only a few exceptions, almost all ILECs support the Proposal.[35] In addition, there is general support from a diverse group of commenters for the Proposal's call

[33] *See also* NECA, *et al.* Comments at 8 (noting that the new rules will require time and effort on the part of all communications service providers and, thus, the Missoula Plan properly incorporates a two-step approach to solving the phantom traffic problem). To be clear, there is nothing in the Proposal that would prevent a transit provider from providing call detail records during the interim period. Indeed, as noted above, the Proposal provides an incentive to do so through its proposed call detail record charge.

[34] *See* Fairpoint Communications Comments at 4 ("It must be remembered, however, that the interim plan is only a first step, and the Commission should proceed to expeditiously approve and implement the complete Missoula Plan for intercarrier compensation reform.").

[35] *See* note 8 *supra*; Fairpoint Communications Comments; Illinois Independent Telephone Association Comments.

signaling rules, which require originating carriers to transmit in their signaling the telephone number assigned to the calling party.[36] While disagreeing with other components of the Proposal, Verizon and Qwest both agree that detailed call signaling requirements are essential to a terminating carrier's ability to bill intercarrier compensation.[37] In addition, Qwest recognizes the importance of the Commission clarifying that carriers using transit services, and not transit service providers themselves, have the responsibility to pay terminating carriers intercarrier compensation and agrees that transit providers have no obligation to police the exchange of traffic or to block traffic that does not comply with the call signaling rules.[38]

There is no basis for Cavalier *et al.*'s assertion that transit providers should pay terminating intercarrier compensation for traffic that is passed to terminating carriers without call detail information.[39] These commenters imply, as the basis for their proposal, that the phantom traffic problem is the result of transit providers "altering" call

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[36] *See, e.g.*, American Public Communications Council Comments; Fairpoint Communications Comments at 4; NECA, *et al.* Comments at 7; Public Utilities Commission of Ohio at 3.

[37] *See* Qwest Communications International, Inc. Comments at n.8 ("Qwest Comments") ("Qwest supports the basic requirements as proposed for call signaling information for originating and intermediate providers that require, in essence, the passing of CN/CPN information for traffic where SS7 signaling is used and the passing of ANI information when MF signaling is used."); Verizon Comments at 23 (agreeing that "establishing more detailed standards for CPN and charge number information in the SS7 signaling stream" will assist terminating carriers in their billing).

[38] Qwest Comments at n.8, 12; Neutral Tandem, Inc. Comments at 6. Neutral Tandem is correct that competition in the transit market should be encouraged; it is incorrect, however, to suggest that anything in the Proposal would dampen such competition. *See* Neutral Tandem Inc. Comments at 5. The Proposal treats similarly situated transit providers equally: under the interim plan, for example, if a transit provider today charges for call detail records or call summary information, it should continue to do so and if the provider provides such records for free, it should continue to do so.

[39] Cavalier, *et al.* Comments at 23-24.

detail information from calls they hand off to terminating carriers.[40] There is no support, however, in the record for any such claim. Moreover, the Proposal specifically requires transit providers to pass through call detail information and subjects any transit carrier that fails to do so to the prospect of Commission enforcement action.[41] That is the appropriate penalty for any failure of a transit provider to pass through call detail information. It is, moreover, the only practical penalty. When a terminating carrier receives traffic from a transit provider without call detail information, there is no way for the terminating carrier to know whether the transit provider stripped away such call detail information or whether the transit provider never received any such call detail information in the first instance to pass through to the terminating carrier. Cavalier, *et al.*'s proposal will simply compel terminating carriers to always seek terminating compensation from transit providers for traffic received without call detail information.[42] The Proposal reflects the more reasoned approach of establishing rules, which are enforceable pursuant to established Commission enforcement procedures, affirming that terminating compensation is paid by originating carriers to terminating carriers, and requiring transit providers to pass through call detail information they receive to terminating carriers.

Commenters also support the Proposal's transit provider obligations, which require transit providers to provide either call detail records or call summary information

[40] *Id.* at 23.

[41] Proposal at II.4.a., III.8.a.

[42] Cavalier's comments also fail to acknowledge an important element of the call signaling rules contained in the Missoula Plan at V.A.2.d which clearly states that transit providers "must work cooperatively with other involved providers to resolve within 90 days any disputes concerning alleged violations of the call signaling rules."

during the interim plan and, with limited exceptions, to provide call detail records pursuant to the permanent plan.[43] These commenters recognize that transit providers, as the entities that indirectly link originating and terminating carriers, are uniquely positioned to create and distribute call summary information and, eventually, call detail records, which are integral to curtailing phantom traffic. Simply put, when more than two carriers are involved in completing a call, transit providers are in the best position to know which carrier is delivering traffic to it and which carrier is receiving this traffic for termination.

It is important for the Commission to recognize that many of the supposed areas of disagreement with the Proposal stem from a fundamental misunderstanding of the scope of the Proposal or when particular provisions would become effective. This is most evident in criticisms directed at Appendix B of the Proposal: the Process for Identification of VoIP-Originated Traffic. Multiple commenters contend that, in suggesting this process, the Missoula Plan Supporters are attempting to make the Commission pre-judge important classification issues that are properly before it in the broader Missoula Plan and other pending Commission proceedings. That is simply not the case. To be clear, the process proposed in Appendix B *would not* apply during the interim plan but, rather, is triggered only when the Missoula Plan becomes effective (Step 1), as plainly stated in the first sentence of this appendix.[44]

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[43] *See, e.g.*, T-Mobile Comments at 2. To be clear, the Proposal (both interim and uniform plans) permits ILECs to create call detail records and to send those records to transit providers. *See* Proposal at II.B.2., III.B.3., 4.

[44] *See* Proposal at 15. The following commenters make incorrect assertions concerning Appendix B or seek clarification that the VoIP process does not apply during the interim plan: All West Communications, *et al.* Comments at 2; Cavalier, *et al.* Comments at 11-14; GCI Comments at 5-

Similarly, many commenters, CMRS carriers and CLECs in particular, viewed the instant comment cycle as a means to comment again on fundamental aspects of the Missoula Plan reform proposal rather than phantom traffic.[45] Such misconceptions and misdirections about the Proposal abound in the CMRS comments. For example, US Cellular expresses concern that CMRS carriers would have to implement costly network modifications for the sole purpose of generating or transmitting records and claims that the Proposal discriminates in favor of ILECs by providing exceptions to these requirements that are available only to them.[46] Unless US Cellular is also a transit provider, it is unclear what network modifications it would be required to make should the Commission adopt the Proposal.

Sprint Nextel misunderstands the Proposal's MECAB request contained in section IV.[47] The MECAB component of the Proposal does nothing with respect to the determination of the appropriate form of intercarrier compensation applicable to any carrier, class of carriers or any particular form of traffic. Specifically, it does not address the question of whether CMRS traffic is subject to switched access charges or other forms of intercarrier compensation, *i.e.*, it does not address the Commission's current

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7; Integra Telecom, Inc. Comments at 6-7; JSI Comments at 7; Qwest Comments at 17-18; Verizon Comments at 33-34; VON Coalition Comments at 9-12.

[45] *See, e.g.*, T-Mobile Comments at 13 (use of telephone numbers to jurisdictionalize traffic); CTIA Comments at 6-7 (intraMTA rule); 7-10 (rating and routing points); 10 (dialing parity); 12-13 (interMTA rule); Broadview Networks, Nuvox Communications, One Communications Corp., XO Communications Comments at 19 ("Broadview, *et al.* Comments") (rural ILEC's section 251(b) and (c) obligations); Cavalier, *et al.* Comments at 26-28 (termination tariffs); Verizon Comments at 21-22 (Missoula Plan's Restructure Mechanism).

[46] US Cellular Corporation Comments at 4. *See also* Sprint Nextel Corporation Comments at 8-9 ("Sprint Nextel") (incorrectly claiming that the Proposal requires originating carriers to "bear the responsibility of generating call detail records or summary reports for terminating carriers . . .").

[47] Sprint Nextel Comments at 9; Proposal at IV.

rules concerning the proper form of intercarrier compensation for interMTA and intraMTA traffic. Rather, when traffic is subject to access charges, the Proposal merely specifies the process to be followed when two or more carriers jointly provide such access. In particular, the Proposal resolves some outstanding uncertainty in the application of the Commission's orders concerning jointly provided access by requiring CLECs and CMRS carriers to adhere to the MECAB requirements when they are involved in the joint provision of access, just as ILECs are today. There is no principled reason not to require CLECs and CMRS carriers to comply with the same MECAB requirements applicable to ILECs.

C. Proposal Offers an Effective and Efficient Solution to Tackle Phantom Traffic

Opponents Overstate Complexity and Cost of Proposal. The interim plan is not as complicated or costly as commenters would have the Commission believe.[48] The Commission should not countenance the suggestion that the cost of implementation provides a basis either to reject the Proposal or to continue to permit carriers to engage in the avoidance of termination charges. There is no dispute that there will be costs associated with implementing the entire Proposal. It is disingenuous, however, for opponents to ignore both the financial benefits of largely halting phantom traffic and the call detail record compensation expressly included in the interim *and* permanent plans. In a different context, the Commission has previously recognized that the costs to carriers to upgrade their equipment to measure the exchange of traffic are "substantially

[48] *See* Verizon Comments at 10 (claiming that it will cost Verizon $250 million dollars to implement Proposal), 23 (estimating 18-36 months to implement interim plan).

outweighed by the benefits of these arrangements."[49] As explained below, it is equally true that the benefits that will be achieved by addressing the phantom traffic problem will substantially outweigh carriers' costs of implementing this proposal. In addition, those carriers that make unfounded assertions about exorbitant implementation costs ignore the costs that result from today's lack of Commission phantom traffic rules.[50]

Today, if an ILEC suspects that a phantom traffic problem exists, it must perform an analysis of the terminating traffic on a case-specific basis. For smaller rural ILECs that lack SS7-capability, such an analysis entails, among other things, connecting an ancillary recording device to record all terminating traffic on their common trunks from the tandem provider. Analysts are then required to review and compare the amount of traffic received with and without the call details. If the volume of call records missing is significant, the rural ILEC must engage the transit provider to assist in resolving the discrepancy. If the rural ILEC is SS7-capable and suspects a phantom traffic problem, it can purchase a SS7 probe to assist with its analysis of its terminating traffic. While this labor intensive and costly work can produce results, it is an inefficient way to address a prevalent, industry-wide problem.[51] Moreover, the majority of the costs associated with

[49] *See Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98; and *Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers*, CC Docket No. 95-185, First Report and Order, 11 FCC Rcd 15499, para. 1045 (1996).

[50] In an earlier pleading, Verizon conceded that phantom traffic negatively affects its bottom line. *See* Verizon November 5, 2005 *ex parte* filing at 15 (contending that "[t]ransit traffic lacking valid CPN/CN negatively impacts Verizon's ability to bill for transit").

[51] For example, in two recent phantom traffic audits performed by a Missoula Plan supporter, the ILEC (1) spent almost 200 hours investigating, quantifying, and resolving the dispute with an IXC, had to enlist the services of outside counsel, and required four months to resolve in the ILEC's favor; and (2) spent almost 350 hours investigating, quantifying, and resolving the dispute with an IXC, had to hire an outside consultant to assist in quantifying the problem, and required six months to resolve in the ILEC's favor.

implementing the Proposal are one time costs as compared to the ongoing costs that will be incurred if the solution is not implemented.

Verizon's implementation estimate is breathtaking both in its size and in the apparent assumptions that went into it. While Verizon fails to provide the basis for its inexplicably high figure, it appears that Verizon has included the costs of making unnecessary upgrades to *every* end office that subtends another carrier's tandem. It also appears that Verizon is ignoring cost-effective and simpler implementation solutions. For example, it is unclear to the Missoula Plan Supporters why Verizon would not use existing SS7-generated data to meet its interim requirements. AT&T, a Missoula Plan supporter, in certain cases may use its existing systems (*e.g.*, SS7, and/or Automatic Message Accounting switch recordings) to produce the required call summary information during the interim period. For these same reasons, nine months is an ample amount of time to implement the interim plan.[52] While there may be some expense associated with creating call summary information if the tandem provider does not already do so, Verizon and other tandem providers should be able to comply with their interim plan requirements using existing tools and without having to make major system modifications as suggested by both Verizon and Qwest.[53]

Proposal's Interim Call Detail Record Charge is Appropriate and Reasonable. During the interim phase, the Proposal permits transit providers that do not already

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[52] Moreover, the uniform process must be implemented by Step 2 of the Missoula Plan, which can be as long as 18-24 months after the release of a Commission order on the Missoula Plan. *See* Proposal at II.B.

[53] Verizon Comments at 14, 22; Qwest Comments at 14 (asserting that it is "at least as costly for a transit service provider to develop the systems capability to provide call summary information as it is to provide call detail records . . . ").

provide call detail records to begin doing so and to charge terminating carriers $0.0025 per record provided that such records meet certain specifications spelled out in the Proposal. Various commenters contend that this charge is "outlandishly" high while others argue that it is woefully inadequate.[54] This figure is based on the rate that Qwest currently charges for call detail records and is an appropriate amount to provide transit providers the incentive to make the necessary systems changes to provide these records during the interim phase in lieu of providing call summary information.[55] It is also appropriate to include a specific call detail record rate in the interim plan and the Commission clearly has authority to set this rate.[56] The failure to establish a rate could lead to disputes and protracted negotiations, which would slow the implementation of the interim plan and would permit phantom traffic to continue unabated.[57]

Several commenters also contend that the call detail record charge should not apply in markets where transit service is not competitive.[58] The Commission should reject this argument as well. A transit provider's costs associated with creating and

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[54] *Compare* Minnesota Independent Coalition Comments at 3 (call detail record charge is "excessive"); Texaltel Comments at 1, 2 ("windfall for AT&T and other transit providers" of "tens of millions of dollars per month") *with* Qwest Comments at 14; Verizon Comments at 20.

[55] *See* Attachment 1 (*available at* <http://www.qwest.com/wholesale/downloads/2005/051021/TransitRecordExchange.doc>). For this reason, the Proposal purposefully does not provide for a call summary charge. *See* Qwest Comments at 14.

[56] We note that Qwest contests the Commission's authority to regulate transit rates. Qwest Comments at 10. The Missoula Plan Supporters will address this assertion in their February 1, 2007 reply comments.

[57] *See* Cavalier, *et al.* Comments at 15-16 (arguing that cost studies are required). The fact that several parties contend that cost studies are necessary only demonstrates the likelihood of disputes and delays as parties litigate what is the "appropriate" call detail record charge.

[58] *See id.* at 15.

distributing call detail records are unrelated to whether a market is competitive. Rather, these costs exist because indirectly interconnected carriers have made the network choice not to establish a direct connection with each other's networks. The transit provider becomes a carrier in the call path as a result of the indirectly interconnected carriers' decisions and it is therefore appropriate to allow these transit providers to assess a charge for these records. Contrary to the assertion by Qwest and others, the Proposal *does* permit transit providers to recover their costs of providing call detail records in the uniform process.[59] The uniform process expressly states that included in the charges for tandem transit service prescribed in the Missoula Plan is the charge for the creation and distribution of call detail records.[60]

During the interim proposal, it is appropriate for the *terminating carrier* to pay the call detail record charge.[61] As explained above, the interim plan was designed, in large part, to maintain the status quo with respect to call detail record charges. That is, if a transit provider was charging a terminating carrier for these records, it should continue to do so and to do so at the same rate. Requiring the originating carrier to pay this charge during the interim process would disrupt the status quo. As explained above, however, in the long term, the Proposal recognizes that the transit provider's costs of providing these records should be included in the rates for transit service and should, therefore, be born by the carrier purchasing the transit service.

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[59] Qwest Comments at 3.

[60] Proposal at II.F. As the Missoula Plan supporters will explain in their February 1, 2007 reply comments, the Commission must also reject the suggestion that transit rates (including the call detail record charge) are subject to TELRIC. *See* Cavalier, *et al.* Comments at 15-16.

[61] *See, e.g.,* Cavalier, *et al.* Comments at 14 (arguing that the originating carrier should pay this charge as part of the cost of transit service).

D. Suggested Alternatives to Proposal Are Deficient

Several commenters offer, in varying degrees of detail, counter-proposals to the one currently before the Commission. Verizon, for example, suggests that the status quo (*i.e.*, a combination of applying industry recommendations and factoring) is entirely adequate to address the phantom traffic problem, despite admitting that 20 percent of its transit and terminating traffic is affected. NCTA would have the Commission simply impose on the industry a disruptive flash-cut to equalized termination rates. GCI and others suggest that the Commission need only establish call signaling rules.[62] For the reasons provided below, the Commission must reject all of these suggestions.

Verizon places much stock in "industry standards" like ITORP and ITAC.[63] Unfortunately, these particular billing arrangements are limited to traffic exchanged between ILECs and cover only intraLATA toll traffic in only a few states. To continue the status quo would leave untouched large segments of the telecommunications industry. While Verizon emphasizes "industry standards," it is not entirely clear to what it is referring. The "standards" that apply to non-access traffic are in fact recommendations, not requirements (*e.g.*, MECAB). The industry needs a set of requirements that are uniform and consistently applied throughout the nation. Moreover, Verizon's current practice, which it would like to continue, is not competitively neutral. For example, for intraLATA access and non-access traffic exchanged between an ILEC and a CLEC or CMRS carrier via a Verizon transit tandem, Verizon provides to ILECs call detail records for transit traffic originated by CLECs and CMRS carriers but does not provide to CLECs

[62] GCI Comments at 5-6; Broadview, *et al.* at 5-6.

[63] Verizon Comments at 11.

or CMRS carriers call detail records for the ILEC-originated transit traffic. The same is true for non-access traffic exchanged between two ILECs that interconnect indirectly via a Verizon transit tandem. Verizon fails to justify the lack of fairness that results from its suggestion to maintain the status quo.

Verizon also proposes that carriers use factoring as the cure-all for traffic that has missing or invalid CPN.[64] Verizon presumes that all carriers will be satisfied with factors. Since the Proposal is a default plan, those carriers that are satisfied with the status quo remain free under the Proposal to use factors.[65] Some solution, however, must be available to carriers that choose not to use factors because, and Verizon must admit as much, factors are never as accurate as actual records. Moreover, factoring does not work in all situations. If the terminating carrier cannot determine whom to bill, it will not know which carrier to engage in negotiations so it would never reach the factoring stage as advocated by Verizon.[66]

NCTA's suggestion to equalize termination rates to reduce the phantom traffic problem ignores the fact that a transition is necessary. As explained above, the Missoula Plan was designed to be implemented in stages to minimize the disruption to consumers and carriers. Moreover, the Commission will require time to review and adopt the Missoula Plan and for carriers to implement its requirements. Given the severity of the

[64] *Id.* at 7-8.

[65] For example, some carriers may choose to factor bill but then validate using call detail records. The Proposal expressly permits this choice.

[66] As explained, not knowing who to bill creates problems that factoring does not resolve. A vital provision of the Proposal is the carrier notification process defined in Appendix A of the Proposal. This requirement facilitates the establishment of billing relationships between originating and terminating carriers.

phantom traffic problem, the Missoula Plan Supporters believe that maintaining the phantom traffic status quo prior to the Plan's implementation is unacceptable.

Similarly, GCI offers only half a solution to the phantom traffic problem by suggesting that the Commission only adopt call signaling rules. As some parties identify, however, there are numerous call flow scenarios for which call signaling information alone does not provide all the information necessary to properly bill intercarrier compensation.[67] For example, when a wireless carrier transmits another wireless carrier's roaming traffic over a local interconnection trunk group to a transit provider, the terminating carrier cannot in all cases determine the carrier responsible for payment based on call signaling alone. For example, if T-Mobile provides connectivity for Verizon Wireless customers who are roaming on T-Mobile's network and T-Mobile delivers calls originated by the Verizon Wireless roaming end user to a transit provider's tandem for delivery to a third party carrier for termination, the information contained in call signaling will not provide the information necessary to identify the carrier responsible for payment of termination charges which is T-Mobile in this example. If the third party carrier utilized call signaling information (*i.e.*, deriving the OCN of the carrier to which the calling telephone number is assigned by looking up the calling party telephone number in the LERG/NPAC database) to determine the carrier responsible for payment, it would incorrectly identify Verizon Wireless. This is also true when a CLEC transmits long distance traffic originated by another carrier, for which the CLEC has taken on responsibility for payment of termination charges, to a transit provider over a local interconnection trunk. Because of this, the terminating carrier needs to have

[67] *See* Sprint Nextel Comments at 6.

additional information that provides the identity of the carrier that is responsible for payment of termination charges. Cavalier, *et al.*'s suggestion that carriers equipped with SS7 capability do not need EMI call detail records is flawed for the same reasons.[68] Even when call signaling information is accurate, it does not always provide terminating carriers with information required to identify the carrier responsible for payment. Call detail records, however, ensure that the terminating carrier knows which party to bill through its requirement that these records include the operating company number or carrier identification code.[69]

E. Vigorous Commission Enforcement is Essential

The Missoula Plan proposes that the Commission use its existing enforcement procedures, including fines, forfeitures and the Enforcement Bureau's Accelerated Docket,[70] to ensure that terminating carriers are paid for their termination services in accordance with the Commission's rules and regulations. The enforcement proposals set forth in the Missoula Plan are both within the scope of processes currently used by the Commission and clearly within the Commission's authority.[71] Opponents of the

[68] Cavalier, *et al*. Comments at 17. These commenters' suggested clarification that OCN and CIC be passed to other interconnecting carriers in call signaling is similarly flawed since OCN is not contained in call signaling and CIC is used for routing traffic to an IXC for long distance call origination. Requiring IXCs to forward the CIC would result in misidentification of the carrier responsible for payment when such carrier is not the same as the originating IXC. *Id.* at 22-23.

[69] *See* Proposal at II.D.4.

[70] *See* 47 C.F.R. § 1.730.

[71] Moreover, the Missoula Plan's enforcement proposal strikes the right balance between those commenters that advocate for no Commission recognition of the phantom traffic problem and those commenters that would have the Commission adopt onerous and one-sided enforcement procedures. *See, e.g.*, Letter from Karen Brinkmann, Counsel for Midsize Carrier Coalition, to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 01-92, Attachment at 1 (filed March 31, 2006).

Missoula Plan incorrectly imply that its Supporters want the Commission to establish new procedures and time frames for the enforcement of matters related to the proposed call signaling rules.[72] The fact is that the Missoula Plan urges the Commission to make the enforcement of call signaling rules a priority, and suggests that the Commission add these rules to the list of proceedings that merit inclusion in the Accelerated Docket.

Contrary to the claims made by some commenters, the Accelerated Docket process is well suited to address call signaling disputes. A few commenters contend that using the Accelerated Docket to address a call signaling complaint "ignores the complexity that would be involved in investigating such a complaint."[73] While this observation may have some merit under the existing rules and regulations, this criticism becomes moot after the Commission adopts the Proposal. The very purpose of the proposed rules is to make clear what carriers' call signaling obligations are and to establish a consistent process that carriers can use to request Commission review. Whether a carrier has fulfilled its obligations under these rules will not require an investigation that is complex or time consuming. As a result, carriers should not be permitted to hide behind lengthy enforcement proceedings to prolong conduct that is not in compliance with call signaling rules. All parties should be able to agree that it is appropriate to use expedited enforcement procedures when a carrier's obligations are readily discernable.

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[72] *See, e.g.*, Verizon Comments at 31.

[73] *Id.*

The Missoula Plan also proposes that the Commission require chronic violators of the call signaling rules to establish direct interconnection with terminating carriers.[74] The proposal reflects the urgent need identified by the Missoula Plan Supporters for the Commission to send a strong message that non-compliance will not be tolerated. In an attempt to detract from the focus on the need for strong enforcement, opponents complain that "the Missoula Proposal provides no insight into what constitutes 'chronic' violations."[75] The emphasis of the proposal, however, is on the need for strict enforcement, and not on trying to define when abuse and non-compliance should result in greater ramifications. In this regard, the Missoula Plan Supporters specifically suggested that "the Commission should establish a procedure to determine whether a provider qualifies as a chronic violator."[76]

Verizon also contends that the Commission has no "authority to impose direct connection as injunctive relief in an enforcement proceeding, absent a hearing pursuant to 47 U.S.C. § 201."[77] The claim is spurious. The Plan does not propose to endow the Commission with injunctive authority to require chronic violators to establish direct interconnection arrangements. Rather, the Plan calls for the Commission to establish rules allowing carriers to demand direct interconnection with other carriers who are chronic violators of the Plan's call signaling rules. The Act does not force carriers to accept interconnection from any other carrier under any terms or conditions demanded by

[74] *See* Section V.C.4.c.

[75] *See, e.g.*, Verizon Comments at 32.

[76] Section V.C.4.c.ii.

[77] *See* Verizon Comments at 32.

the requesting carrier or without any terms or conditions at all. The Commission has clear authority to establish regulations that govern the terms and conditions applicable to interconnection, including the terms and conditions applicable to the utilization of indirect interconnection provided pursuant to section 251 of the Act.[78] Surely even the staunchest opponents to the Missoula Plan would not suggest that carriers must tolerate, or that the Commission is powerless to establish rules to prevent, continued abuse of the use of indirect interconnection or that the Commission lacks the authority to establish standards pursuant to which a carrier may insist on direct interconnection in certain circumstances.

The Missoula Plan Supporters and other members of the industry recognize the reality of the phantom traffic problem, the need for a long-term comprehensive solution, and the immediate need for the interim plan. Addressing the problem with rules alone, however, will not suffice. Strong, effective and expedient enforcement measures are a necessary element of the solution, and commenters have presented no arguments or claims to justify rejecting the common sense call signaling enforcement proposals contained in the Missoula Plan.

F. Extension of the Commission's T-Mobile Order is Necessary

The Proposal requests the Commission to extend the holding in its *T-Mobile Order*, which required wireless carriers to submit to the negotiation and arbitration

[78] *See* 47 USC §251(c); Comments of the Supporters of the Missoula Plan at 14-15 (filed Oct. 25, 2006).

provisions of section 252 upon the request of an ILEC, to "other wireline carriers."[79] Unless the Commission similarly clarifies that ILECs may request interconnection from CLECs and invoke the negotiation and arbitration provisions of section 252, ILECs will have no ability to bring CLECs to the negotiating table.[80] This is particularly true if CLECs were given the unilateral ability to file tariffs, as proposed by Cavalier, *et al.*, as opposed to negotiating interconnection agreements, in order to collect intercarrier compensation.[81] The same finding that the Commission made in the *T-Mobile Order* with respect to ILECs and CMRS carriers – determining that it was necessary to ensure that ILECs have the ability to compel negotiations and arbitrations – applies with equal force to ILEC-CLEC relationships and this request finds support among ILECs and CLECs.[82] Equity demands that ILECs have similar rights to establish the terms and conditions of interconnection with CLECs that send traffic to ILEC networks as CLECs have with ILECs.

III. CONCLUSION

[79] Proposal at 2 (citing *Developing a Unified Intercarrier Compensation Regime, T-Mobile et al. Petition for Declaratory Ruling Regarding Incumbent LEC Wireless Termination Tariffs,* CC Docket No. 01-92, Declaratory Ruling and Report and Order, 20 FCC Rcd 4855 (2005)).

[80] *See* Attachment 2 (letter from a CLEC to Embarq stating that it has no obligation as a CLEC to enter into section 252 negotiations with Embarq, citing the Commission's *T-Mobile Order* in support of this view). NCTA is therefore incorrect to contend that "there is no evidence to suggest that ILECs have had any difficulty negotiating agreements with CLECs." NCTA Comments at 5. *See also* Wisconsin State Telecommunications Association Small Company Committee Comments at 4-5 (explaining that its members have experienced difficulty "when seeking interconnection with CLECs in neighboring service territories"); USTelecom Comments at 7 ("[c]arriers that terminate traffic originated by CLECs must be able to effectuate billing/compensation agreements with those carriers").

[81] Cavalier, *et al.* Comments at 27-28.

[82] *See, e.g.*, Broadview, *et al.* Comments at 6, 18; RICA Comments at 4;

For the foregoing reasons, the Missoula Plan Supporters respectfully request that the Commission adopt the Proposal. Through the establishment of call signaling and call detail records rules, the Proposal provides a straight-forward and effective solution to the phantom traffic problem, which is increasingly plaguing the telecommunications industry. Commenters that oppose the Proposal have plainly overstated the cost of implementing the Proposal and its complexity by ignoring both the financial benefits that will accrue from curbing phantom traffic and simpler, more cost effective methods to implement the Proposal's requirements. Moreover, various commenters have attempted to blur the scope of the phantom traffic Proposal by raising arguments that have no relevance to the Proposal at hand. The Missoula Plan Supporters request that the Commission reject these arguments and move quickly to adopt the Proposal.

Sincerely,

AT&T INC.

/s/ Cathy Carpino

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Its Attorney

January 5, 2007

ATTACHMENT

I

TRANSIT RECORD EXCHANGE AGREEMENT TO CO-CARRIERS
(Wireline - Transit Qwest - CLEC)

This Transit Record Exchange Agreement to Co-Carriers ("Agreement") is made by and between Qwest Corporation ("Qwest"), a Colorado corporation, and ("CLEC"). The service(s) described in this Agreement shall be performed in the state of .

1. This Agreement is made in order for each party to obtain from the other certain technical and business information related to wireline network usage data under terms that will protect the confidential and proprietary nature of such information. Specifically, Qwest and CLEC will exchange wireline network usage data originated by a wireline Local Exchange Carrier (LEC) where the NXX resides in a wireline LEC switch, and transits Qwest's network. Each party agrees to provide to the other this wireline network usage data when Qwest or CLEC interconnects with a wireline LEC either currently or in the future. [Qwest will charge CLEC $.0025 per record.] The parties understand that this information is carrier protected information under §222 of the Communications Act and shall be used solely for the purposes of billing the wireline LEC. Each party further agrees to provide the other with the information required in Attachment 1 to this Agreement, which is attached hereto and incorporated herein by this reference.

2. As used herein, "Confidential Information" shall mean all information reasonably related to network usage data for all network traffic for all calls originating from CLEC or other Exchange Carrier (EC), which are interconnected by either party and terminated within either parties' network, furnished, in whatever tangible form or medium, or disclosed by one party to the other, which is marked as confidential or proprietary, or, for information which is orally disclosed, the disclosing party indicates to the other at the time of disclosure the confidential or proprietary nature of the information and reduces orally disclosed Confidential Information to writing and provides it to the receiving party within twenty (20) days after such disclosure which is also marked as confidential. All usage information exchanged between the parties on any medium which contains usage information of the minutes of termination of either party or a third party's network, whether marked confidential or not, is considered Confidential Information. Said Confidential Information shall be used by the parties for billing purposes only.

3. This Agreement arises out of an Interconnection Agreement between the Parties, which was approved by the ("Commission"). This Agreement shall become effective upon execution by both parties and shall terminate at the same time as the said Interconnection Agreement. Provided, however, either party may terminate this Agreement upon sixty (60) days written notice to the other party. Notwithstanding the termination of this Agreement, each party agrees to treat such Confidential Information as confidential for a period of three (3) years from the date of receipt of same unless otherwise agreed to in writing by both parties. In handling the Confidential Information, each party agrees: (a) not to copy such Confidential Information of the other, except for billing purposes, unless specifically authorized; (b) not to make disclosure of any such Confidential Information to anyone except employees and subcontractors of such party to whom disclosure is necessary for the purposes set forth above; and (c) to appropriately notify such employees and subcontractors that the disclosure is made in confidence and shall be kept in confidence in accordance with this Agreement. The obligations set forth herein shall be satisfied by each party through the exercise of at least the same degree of care used to

restrict disclosure of its own information of like importance. Notwithstanding the foregoing, disclosure may be made under the circumstances set forth in Section 7 of this Agreement.

4. Each party agrees that in the event permission is granted by the other to copy Confidential Information, or that copying is otherwise permitted hereunder, each such copy shall contain and state the same confidential or proprietary notices or legends, if any, which appear on the original. Nothing herein shall be construed as granting to either party any right or license under any copyrights, inventions, or patents now or hereafter owned or controlled by the other party.

5. The obligations imposed by this Agreement shall not apply to any information that: (a) is already in the possession of, is known to, or is independently developed by the receiving party; or (b) is or becomes publicly available through no fault of the receiving party; or (c) is obtained by the receiving party from a third person without breach by such third person of an obligation of confidence with respect to the Confidential Information disclosed; or (d) is disclosed without restriction by the disclosing party; or (e) is required to be disclosed pursuant to the lawful order of a government agency or disclosure is required by operation of the law.

6. Except for the obligations of use and confidentiality imposed herein, no obligation of any kind is assumed or implied against either party by virtue of the party's meetings or conversations with respect to the subject matter stated above or with respect to whatever Confidential Information is exchanged. Each party further acknowledges that this Agreement and any meetings and communications of the parties relating to the same subject matter, including the exchange of Confidential Information, shall not: (a) constitute an offer, request, or contract with the other to engage in any research, development or other work; (b) constitute an offer, request or contract involving a buyer-seller relationship, joint venture, teaming or partnership relationship between the parties; or (c) impair or restrict either party's right to make, procure or market any products or services, now or in the future, which may be similar to or competitive with those offered by the disclosing party, or which are the subject matter of this Agreement, so long as that party's obligations of confidentiality under this Agreement are not breached. The parties expressly agree that any money, expenses or losses expended or incurred by each party in preparation for, or as a result of this Agreement or the parties' meetings and communications, is at each party's sole cost and expense.

7. Without the prior consent of the other party, neither party shall disclose to any third person the existence or purpose of this Agreement, the terms or conditions hereof, or the fact that discussions are taking place and that Confidential Information is being shared, except as may be required by law, regulation or court or agency order or demand, and then only after prompt prior notification to the other party of such required disclosure. The parties also agree that neither party shall use any trade name, service mark, or trademark of the other or refer to the other party in any promotional activity or material without first obtaining the prior written consent of the other party.

8. Neither Party shall assign, sublet, or transfer any interest in this Agreement without the prior written consent of the other Party, which consent shall not be unreasonably withheld; provided, however, that Qwest may assign and transfer this Agreement to any parent, subsidiary, successor, affiliated company or other business entity without the prior written consent of CLEC.

9. Any claim, controversy or dispute between the Parties shall be resolved by binding arbitration in accordance with the Federal Arbitration Act, 9 U.S.C. 1-16, not state law. The arbitration shall be conducted by a retired judge or a practicing attorney under the rules of the American Arbitration Association. The arbitration shall be conducted in Denver, Colorado. The arbitrator's decision shall be final and may be entered in any court with jurisdiction. Each Party shall be responsible for its own costs.

10. This Agreement, together with any and all exhibits incorporated herein, constitutes the entire Agreement between the parties with respect to the subject matter of this Agreement. No provision of this Agreement shall be deemed waived, amended or modified by either party, unless such waiver, amendment or modification is made in writing and signed by both parties. This Agreement supersedes all previous agreements between the parties relating to the subject matter hereof.

11. Any notice to be given hereunder by either party to the other, shall be in writing and shall be deemed given when sent either by mail to the address listed below or by facsimile with a confirmation copy sent by mail.

CLEC

Qwest Corporation
Director-Interconnection Compliance
1801 California Street, Suite 2410
Denver, Colorado 80202

Copy to:
Qwest Legal Department
General Counsel-Interconnection
1801 California Street, Suite 3800
Denver, Colorado 80202

12. Notwithstanding anything to the contrary, CLEC may not make any disclosure to any other person or any public announcement or press release regarding this Agreement or any relation between CLEC and Qwest, without the prior written consent of the Qwest Senior Vice-President of Corporate Communications. Qwest shall have the right to terminate this Agreement and any other agreements between the Parties if CLEC violates this provision.

IN WITNESS WHEREOF, the parties have caused their duly authorized representatives to sign this Agreement as of the date first stated above.

Qwest Corporation	**CLEC**
_____	_____
Authorized Signature	Authorized Signature
_____	_____
Printed Name	Printed Name
_____	_____
Title	Title
_____	_____
Date	Date

ATTACHMENT 1
(Wireline - Transit Qwest - CLEC)

DATA REQUIRED BY THE PARTIES TO PROCESS USAGE DATA:

Operating Company Number (OCN)	State

ATTACHMENT

II

June 1, 2006

Via Overnight Delivery

Ms. Kathryn Feeney
Wholesale Markets
Embarq
9300 Metcalf
Overland Park, KS 66212

Re: Request for Interconnection Agreement Negotiation

Dear Ms. Feeney:

I am in receipt of your letter dated May 19, 2006, in which Embarq - Florida, Incorporated ("Embarq") requests (" ") to enter into negotiations for an interconnection agreement pursuant to the negotiation requirements of Section 252 of the Communications Act of 1934, as amended; part 51.715 of the Commission's rules, 47 C.F.R. § 51.715; and the *T-Mobile Declaratory Ruling*, FCC 05-42.

Section 252 of the Act establishes the processes by which an interconnection agreement between an incumbent local exchange carrier ("LEC") and a requesting carrier takes shape and becomes effective, including certain negotiation and arbitration procedures. Notably, Section 252 provides that an incumbent LEC (such as Embarq) may receive requests for interconnection from competing local exchange carriers (such as). But Section 252 does not provide for, nor entitle, Embarq itself to invoke the negotiation procedures set forth in Section 252. In the *T-Mobile Declaratory Ruling*, the Federal Communications Commission (the "Commission") amended part 20.11 of its rules to clarify that an incumbent LEC may request interconnection from a *commercial mobile radio service* ("CMRS") provider and invoke the negotiation and arbitration procedures set forth in Section 252 of the Act. However, the *T-Mobile Declaratory Ruling* is limited to the negotiation of interconnection arrangements between incumbent LECs and CMRS providers. That decision did not address nor otherwise alter the negotiation of interconnection arrangements between incumbent LECs and requesting *wireline* carriers under Section 252. Accordingly, hereby rejects Embarq's request to enter into negotiations for an interconnection agreement under Section 252.

acknowledges that Section 251 imposes a general interconnection obligation upon all telecommunications carriers, including In particular, Section 251(a)(1) of the

Act provides that "[e]ach telecommunications carrier has the duty to interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers." believes that it already is meeting its obligations under Section 251 by interconnecting with Embarq through transiting arrangements. Nevertheless, is willing to entertain the opening of discussions with Embarq regarding a direct interconnection arrangement under Section 251 (but *not* under Section 252).

Finally, rejects the notion that Embarq can unilaterally impose a prescribed terminating access rate on traffic exchanged between Embarq and . Pursuant to Section 51.715 of the Commission's rules, an incumbent LEC can, upon receiving a request for negotiation from another carrier, establish an interim rate that the requesting carrier must pay during the period of negotiation and arbitration, provided that the incumbent LEC and the requesting carrier are not parties to an existing interconnection agreement. Importantly, Section 51.715 of the Commission's rules does not give an incumbent LEC the right to request negotiation with a wireline carrier and demand payment of an interim rate during the period of negotiation and arbitration. In the *T-Mobile Declaratory Ruling*, the Commission amended its rules to permit an incumbent LEC to request negotiation with a *CMRS provider*, and, once the request is made, to demand interim compensation from the *CMRS provider* during the period of negotiation and arbitration in accordance with the rate provisions set forth in part 51.715 of the Commission's rules. However, the *T-Mobile Declaratory Ruling* did not address negotiations between wireline carriers, and the rule the Commission adopted in that ruling, Section 20.11, does not permit an incumbent LEC to request negotiation with a wireline carrier or demand interim compensation during the period of negotiation and arbitration. In this case, given that has not requested negotiation with Embarq pursuant to Section 51.301 of the Commission's rules, the interim compensation arrangements set forth in Section 51.715 of the Commission's rules do not apply. Accordingly, there is no basis for Embarq unilaterally to impose a prescribed terminating access rate on traffic exchanged between Embarq and .

Please contact me if you would like to begin discussions regarding a direct interconnection arrangement under Section 251 of the Act.

Sincerely,